SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953.

No. 235.

GEORGE V. TAWES,

Petitioner,

versus

CIE. DES MESSAGERIES MARITIMES,

Respondent.

PETITION FOR REHEARING AND BRIEF IN SUPPORT THEREOF.

The petition of George V. Tawes, petitioner for writ of certiorari with respect shows:

I.

That the denial of the petition for writ of certiorari is prejudicial to the interest of your petitioner and a rehearing should be granted in this matter for the following reasons to-wit:

(1) That the doctrine enunciated by this case is contrary to the doctrine of *Seas Shipping Company v. Sieracki,* 328 US 85, 66 Sup. Ct. 872.

(2) That the decision in this case leaves an American pilot aboard a foreign vessel who is injured by the unseaworthiness of the vessel or the negligence of the crew without any recourse for his damages where he is unable to investigate and prove negligence by reason of his injuries and the sailing of the vessel. Therefore if the unexplained falling of the ladder in this case does not shift the burden of proof then many injustices will result in other cases particularly as to pilots, stevedores and government employees (such as public health and immigration officers).

Petitioner files in connection with this petition a brief in support thereof and for the reasons hereinabove set forth and amplified, a rehearing should be granted and finally the writ of certiorari prayed for should be granted.

WHEREFORE, petitioner, George V. Tawes, prays that this Honorable Court grant a rehearing and after a rehearing grant a writ of certiorari to the United States Court of Appeals for the Fifth Circuit.

CICERO C. SESSIONS,
Counsel for Petitioner.

WOODROW DE CASTRO,
RICHARD B. MONTGOMERY, JR.,
ARTHUR B. HAMMOND, JR.,
VAN SICLEN, RAMIREZ & DE CASTRO,
Of Counsel.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953.

No. 235.

GEORGE V. TAWES,

Petitioner,

versus

CIE. DES MESSAGERIES MARITIMES,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR REHEARING.

In this case petitioner, a pilot, left the ship by means of a stepladder. This stepladder was on the vessel and provided by the vessel for this purpose. While he was off the ship the boatswain adjusted the stepladder. Petitioner on coming back aboard the ship was the first person to step on the ladder after its adjustment. When he did so step on the ladder, the ladder fell injuring him. We submit that this unexplained falling of the ladder shifts the burden of proof.

We are requesting this rehearing because we feel that we did not sufficiently stress the decision of *Seas Shipping Company v. Sieracki*, 328 U. S. 85, 66 Sup. Ct. 872 in our original petition and that this decision is a sub-

stantial ground for granting the writ which was not previously presented.

The *Sieracki* case involved a stevedore who was injured aboard ship when a shackle broke causing a boom and tackle to fall. The Court held in that case:

> "Because rationalizing the liability as one attached by law to the relation of shipowner and seaman, where this results from contract, may have been thought useful to negative, the importation of those common-law tort limitations does not mean, however, that the liability is itself contractual or that it may not extend to situations where the ship's work is done by others not in such an immediate relation of employment to the owners. That the liability may not be either so founded or so limited would seem indicated by the stress the cases uniformly place upon its relation, both in character and in scope, to the hazards of marine service which unseaworthiness places on the men who perform it. *These, together with their helplessness to ward off such perils and the harshness of forcing them to shoulder alone the resulting personal disability and loss, have been thought to justify and to require putting their burden, in so far as it is measurable in money, upon the owner regardless of his fault.* Those risks are avoidable by the owner to the extent that they may result from negligence. And beyond this he is in position, as the worker is not, to distribute the loss in the shipping community which receives the service and should bear its cost.
>
> "(7) These and other considerations arising from the hazards which maritime service places upon men who perform it, rather than any consensual basis of

> responsibility, have been the paramount influences dictating the shipowner's liability for unseaworthiness as well as its absolute character. It is essentially a species of liability without fault, analogous to other well known instances in our law. Derived from and shaped to meet the hazards which performing the service imposes the liability is neither limited by conceptions of negligence nor contractual in character. Mahnich v. Southern S. S. Co., supra; Atlantic Transport Co. of West Virginia v. Imbrovek, 234 U. S. 52, 34 S. Ct. 733, 58 L. Ed. 1208, 51 L. R. A., N. S., 1157; Carlisle Packing Co. v. Sandanger, supra. It is a form of absolute duty owing to all within the range of its humanitarian policy." (Italics ours.)

Now an American pilot hurt aboard a foreign vessel going through the Panama Canal and which vessel will be beyond his reach before he is able to even think about obtaining a lawyer to investigate the matter is certainly in a most helpless position and it is doubly harsh to force him to shoulder alone the resulting personal disability and loss. The doctrine of the *Sieracki* case in such a situation requires the putting of that burden in so far as it is measurable in money upon the owner regardless of his fault. As it was stated in the *Sieracki* case, the owner is in a position, whereas Tawes is not, to distribute the loss in the shipping community which receives the service and should bear its cost.

The results of this decision can perhaps more graphically be seen by applying it to the Port of New York. Foreign ships come into this port in great numbers. American pilots go aboard and also United States gov-

ernment officials such as health officers, immigration officers and customs officials board her. If one of these persons is injured and the vessel sails before he can have an investigation made, this person will be forced to bear the burden of his personal and financial loss, simply because through no fault of his own he was unable to obtain sufficient proof of negligence.

Here Tawes was injured by the unexplained falling of the stepladder aboard a ship. This should in any event shift the burden of proof. But under the holding of this case a pilot who is injured badly on a foreign ship that is leaving immediately and who therefore can't make an investigation to prove negligence must bear the entire burden of the disability and loss. This is certainly a situation that the humanitarian policy laid down in the *Sieracki* case covers.

We therefore submit that this case should be reviewed in the light of the *Sieracki* case and that on the basis of the doctrine of that case the writ of certiarari should be granted.

CICERO C. SESSIONS,
Counsel for Petitioner.

WOODROW DE CASTRO,
RICHARD B. MONTGOMERY, JR.,
ARTHUR B. HAMMOND, JR.,
VAN SICLEN, RAMIREZ & DE CASTRO,
Of Counsel.

I certify that the foregoing petition for rehearing is presented in good faith and not for delay and that the petition is restricted to the grounds above specified.

.....

CICERO C. SESSIONS.

I certify that the foregoing petition for rehearing and brief in support thereof were served on opposing counsel by depositing a copy of same in the United States Mail, properly addressed, postage prepaid this date.

.....

CICERO C. SESSIONS.